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HOUSE BILL 219

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO AGREEMENTS FOR THE DEVELOPMENT OF OIL AND GAS;  
ENACTING THE FREE MARKET IN ENERGY RESTORATION ACT; REQUIRING  
NOTICE TO CERTAIN SURFACE OWNERS BEFORE ENTERING INTO A LEASE  
OR SIMILAR AGREEMENT; REQUIRING NOTICE BY THE COMMISSIONER OF  
PUBLIC LANDS BEFORE OFFERING CERTAIN LEASES FOR SALE;  
PROHIBITING THE ISSUANCE OF CERTAIN PERMITS UNDER CERTAIN  
CIRCUMSTANCES; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 6 of this act may be cited as the "Free Market in  
Energy Restoration Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) due to federal, state and private land

1 management policies, New Mexico has millions of acres in which  
2 the surface and the mineral estates have been separated and are  
3 now owned by different persons;

4 (2) often the surface owner does not know that  
5 the mineral estate has been separated from the surface or does  
6 not know how to identify or locate the owner of the mineral  
7 estate;

8 (3) notice of an oil and gas lease or notice  
9 of imminent oil and gas operations to a surface owner often  
10 occurs only after an oil and gas operator has made a  
11 substantial investment in purchasing a lease and formulating a  
12 development plan; and

13 (4) early notice to a surface owner of an  
14 intent to acquire an oil and gas lease or similar agreement  
15 would allow the surface owner an equitable opportunity to  
16 negotiate independently with the owner of the mineral estate  
17 and would also allow the mineral estate owner an alternative,  
18 competitive option for benefiting from the mineral ownership.

19 B. The purposes of the Free Market in Energy  
20 Restoration Act are to:

21 (1) require advance notice to a private surface  
22 owner by an oil and gas operator of the operator's intent to  
23 acquire a lease or other development right for private minerals  
24 underlying the surface estate; and

25 (2) provide mineral estate owners with an

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1 alternative, competitive option for benefiting from mineral  
2 ownership.

3 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Free Market in Energy Restoration Act:

5 A. "mineral owner" means a person who owns legal  
6 title to the mineral estate that includes the oil and gas in  
7 place underlying a surface owner's real property;

8 B. "oil and gas development agreement" means a  
9 lease or other agreement between a mineral owner and an  
10 operator or an operator's predecessor in interest under which  
11 the operator has the legal right to conduct oil and gas  
12 operations on the surface owner's land;

13 C. "oil and gas operations" means all activities  
14 affecting the surface owner's land that are associated with  
15 exploration, drilling or production of oil or gas;

16 D. "operator" means a person with the legal right  
17 to conduct oil and gas operations and includes the agents,  
18 employees and contractors of that person; and

19 E. "surface owner" means a person who holds legal  
20 or equitable title, as shown in the records of the county  
21 clerk, to the surface of the real property that is subject to  
22 an oil and gas development agreement.

23 Section 4. [NEW MATERIAL] DUTY TO NOTIFY SURFACE OWNER.--

24 A. Except as provided in Subsection E of this  
25 section, a person seeking to enter into an oil and gas

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1 development agreement with a mineral owner shall, before  
2 entering into the agreement, by certified mail or hand  
3 delivery, give the surface owner notice of the intent to enter  
4 into the agreement. The notice shall include:

5 (1) a statement that the notice is required by  
6 the provisions of the Free Market in Energy Restoration Act;

7 (2) a statement that the surface owner does  
8 not own the oil and gas underneath the surface and that the  
9 surface owner may be legally unable to prevent oil and gas  
10 operations on the surface owner's land;

11 (3) a statement that the person giving notice  
12 intends to enter into an oil and gas development agreement with  
13 the mineral owner;

14 (4) the name, address, telephone number and,  
15 if available, facsimile number and electronic mail address of  
16 the mineral owner; and

17 (5) a statement that the surface owner may be  
18 able to avoid or minimize oil and gas operations by entering  
19 into a separate agreement with the mineral owner.

20 B. The notice required by this section shall be  
21 delivered to the surface owner at the address shown by the  
22 records of the county clerk at the time the notice is given.  
23 If legal title and equitable title are not held by the same  
24 person, notice shall be given to both the holder of legal title  
25 and to the holder of equitable title at the addresses shown by

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1 the records of the county clerk at the time the notice is  
2 given.

3 C. A person sending a notice pursuant to this  
4 section shall not enter into an oil and gas development  
5 agreement with the mineral owner for thirty days following the  
6 receipt of the notice.

7 D. A notice required by this section shall be  
8 deemed to have been received five days after mailing by  
9 certified mail or immediately upon hand delivery.

10 E. A person may enter into an oil and gas  
11 development agreement with a mineral owner without giving the  
12 notice otherwise required by this section if:

13 (1) within the twelve months immediately  
14 preceding the date that the oil and gas development agreement  
15 is entered into, a notice has previously been given to the  
16 surface owner pursuant to the provisions of this section;

17 (2) the surface owner's property that was  
18 included in the previous notice is identical to the surface  
19 owner's property subject to the oil and gas development  
20 agreement; and

21 (3) the surface owner and the mineral owner  
22 are the same persons as in the previous notice.

23 Section 5. [NEW MATERIAL] FAILURE TO GIVE NOTICE.--

24 A. An oil and gas development agreement entered  
25 into without first giving the notice required by Section 4 of

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1 the Free Market in Energy Restoration Act or entered into  
2 during the thirty-day waiting period required by that section  
3 is void and unenforceable and any entry unto the surface  
4 owner's land in reliance upon the void agreement is a criminal  
5 and civil trespass.

6 B. No permit to drill or other permit to conduct  
7 oil and gas operations shall be issued by the oil conservation  
8 commission or the oil conservation division of the energy,  
9 minerals and natural resources department pursuant to the Oil  
10 and Gas Act unless the applicant certifies that:

11 (1) the oil and gas development agreement  
12 under which the oil and gas operations are to be conducted was  
13 entered into in compliance with the requirements of the Free  
14 Market in Energy Restoration Act; or

15 (2) the provisions of the Free Market in  
16 Energy Restoration Act do not apply to the applicable oil and  
17 gas development agreement.

18 Section 6. [NEW MATERIAL] APPLICABILITY.--The Free Market  
19 in Energy Restoration Act applies to all oil and gas  
20 development agreements, entered into after the effective date  
21 of that act, for land in which the surface owner and the  
22 mineral owner are separate persons except those oil and gas  
23 development agreements for land:

24 A. in which the mineral owner is the federal  
25 government or one of its agencies; or

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1           B. in which the mineral owner is the state and that  
2 is subject to the jurisdiction of the commissioner of public  
3 lands.

4           Section 7. Section 19-10-17 NMSA 1978 (being Laws 1929,  
5 Chapter 125, Section 8, as amended) is amended to read:

6           "19-10-17. PUBLIC SALE OF RESTRICTED DISTRICT LEASES--  
7 TIME--REGULATIONS--NOTICE--MINIMUM BONUS--SEALED BIDS OR PUBLIC  
8 AUCTION AUTHORIZED--SITE OF SALE--PUBLICATION OF NOTICE--  
9 REJECTION OF BIDS--COMPLETION OF TRANSACTION.--

10           A. The commissioner shall hold a public sale of oil  
11 and gas leases upon lands [~~which~~] that may be open to lease and  
12 embraced within the restricted district or districts created  
13 and [~~which~~] that may be created under Section 19-10-16 NMSA  
14 1978 on the third Tuesday of each month or on the next business  
15 day following, where the third Tuesday falls on a legal  
16 holiday, and shall offer for lease such lands in designated  
17 tracts to the highest and best bidder. All sales of leases  
18 upon competitive bidding or a public auction shall be governed  
19 by regulations issued by the commissioner not in conflict with  
20 the provisions of Chapter 19, Article 10 NMSA 1978. Notice of  
21 such sales shall be given by posting in a conspicuous place in  
22 the state land office, not less than ten days before the date  
23 of sale, a notice of the sale specifying the day and hour when  
24 and the place where the sale will be held and specifying the  
25 following for each tract to be offered for lease:

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- 1 (1) a description of the lands;
- 2 (2) the form of lease to be used;
- 3 (3) the royalty rate; and
- 4 (4) the annual rental per acre to be paid.

5 B. The commissioner may, when it is deemed to be  
6 for the best interests of the beneficiaries of such lands, also  
7 specify a minimum bonus to be paid for the leases upon the  
8 respective tracts, and, when so specified, the bonus shall be  
9 paid in addition to the first year's rental. The notice shall  
10 also contain such other information as the commissioner may  
11 deem advisable or necessary. Sales may be conducted through  
12 sealed bids or at public auction or by both methods combined,  
13 but the method of conducting each sale shall be stated in the  
14 notice of sale required pursuant to this section. Sales may be  
15 held at the option of the commissioner either in the office of  
16 the commissioner or at the county seat of the county in which  
17 the lands, or the greater part thereof, are situated or such  
18 other place within the state as the commissioner may designate  
19 in the notice of public auction provided for in this section.  
20 If a sale includes lands in which the surface estate has been  
21 separated from the mineral estate or in which the surface  
22 estate is being sold under a purchase contract, notice of the  
23 sale shall also be given to the surface owner or purchaser of  
24 any lands included in the sale at the address shown by the  
25 records of the county clerk at the time the notice is given,

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1 and, if legal title and equitable title to the surface estate  
2 are not held by the same person, notice shall be given to both  
3 the holder of legal title and to the holder of equitable title  
4 at the addresses shown by the records of the county clerk at  
5 the time the notice is given. The commissioner is also  
6 authorized to give such additional notice of the sales, either  
7 by publication in newspapers or by mailing copies of the notice  
8 of sale to interested persons, firms or corporations, as [~~he~~]  
9 the commissioner may deem necessary to give proper publicity  
10 thereto. The commissioner shall have the right to reject all  
11 bids received at any sale for the lease upon any tract but  
12 shall not reject any bids made in conformity with the  
13 regulations and provisions of Chapter 19, Article 10 NMSA 1978  
14 without rejecting all bids applicable to the same tract of  
15 land. Leases sold at sales as provided in this section shall  
16 be awarded to the respective bidders offering the largest  
17 bonus, which shall be paid in addition to the first year's  
18 rental, or, where a minimum bonus is not specified and no offer  
19 of a bonus is received, to the bidder offering the rental  
20 specified in the notice of sale [~~which~~] that, for the first  
21 year, shall not be less than one hundred dollars (\$100) for  
22 each lease as provided in Section 19-10-15 NMSA 1978. Where  
23 two or more sealed bids making the same offer for the same  
24 tract are received, the commissioner shall award the lease in  
25 accordance with such regulations as [~~he~~] the commissioner may

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1 prescribe. The successful bidders shall file proper  
2 applications for the leases purchased and shall complete the  
3 payment of any balance due on their bids before the closing of  
4 the office of the commissioner on the day of the sale."

5 Section 8. Section 30-14-1 NMSA 1978 (being Laws 1963,  
6 Chapter 303, Section 14-1, as amended) is amended to read:

7 "30-14-1. CRIMINAL TRESPASS.--

8 A. Criminal trespass consists of knowingly entering  
9 or remaining upon posted private property without possessing  
10 written permission from the owner or person in control of the  
11 land. The provisions of this subsection do not apply if:

12 (1) the owner or person in control of the land  
13 has entered into an agreement with the department of game and  
14 fish granting access to the land to the general public for the  
15 purpose of taking any game animals, birds or fish by hunting or  
16 fishing; or

17 (2) a person is in possession of a landowner  
18 license given to ~~[him]~~ the person by the owner or person in  
19 control of the land that grants access to that particular  
20 private land for the purpose of taking any game animals, birds  
21 or fish by hunting or fishing.

22 B. Criminal trespass also consists of knowingly  
23 entering or remaining upon the unposted lands of another  
24 knowing that such consent to enter or remain is denied or  
25 withdrawn by the owner or occupant ~~[thereof]~~ of the lands.

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1 Notice of no consent to enter shall be deemed sufficient notice  
2 to the public and evidence to the courts, by the posting of the  
3 property at all vehicular access entry ways.

4 C. Criminal trespass also consists of knowingly  
5 entering or remaining upon the posted or unposted lands of a  
6 surface owner with the intent of conducting oil and gas  
7 operations under a lease or other agreement that is void  
8 pursuant to Section 5 of the Free Market in Energy Restoration  
9 Act.

10 [~~E.~~] D. Criminal trespass also consists of  
11 knowingly entering or remaining upon lands owned, operated or  
12 controlled by the state or any of its political subdivisions  
13 knowing that consent to enter or remain is denied or withdrawn  
14 by the custodian [~~thereof~~] of the lands.

15 [~~D.~~] E. Any person who enters upon the lands of  
16 another without prior permission and injures, damages or  
17 destroys any part of the realty or its improvements, including  
18 buildings, structures, trees, shrubs or other natural features,  
19 is guilty of a misdemeanor and [~~he~~] shall be liable to the  
20 owner, lessee or person in lawful possession for civil damages  
21 in an amount equal to double the value of the damage to the  
22 property injured or destroyed.

23 [~~E. Whoever~~] F. Any person who commits criminal  
24 trespass is guilty of a misdemeanor. Additionally, any person  
25 who violates the provisions of Subsection A, B, [~~or~~] C or D of

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1 this section, when in connection with hunting, fishing or  
2 trapping activity, shall have [~~his~~] the person's hunting or  
3 fishing license revoked by the state game commission for a  
4 period of not less than three years, pursuant to the provisions  
5 of Section 17-3-34 NMSA 1978.

6 [~~F. Whoever~~] G. Any person who knowingly removes,  
7 tampers with or destroys any "no trespass" sign is guilty of a  
8 petty misdemeanor; except when the damage to the sign amounts  
9 to more than one thousand dollars (\$1,000), [~~he or she~~] the  
10 person is guilty of a misdemeanor and shall be subject to  
11 imprisonment in the county jail for a definite term less than  
12 one year or a fine not more than one thousand dollars (\$1,000)  
13 or to both such imprisonment and fine in the discretion of the  
14 judge.

15 [~~G.~~] H. This section, as amended, shall be  
16 published in all issues of "Big Game Hunt Proclamation" as  
17 published by the department of game and fish."

18 Section 9. A new section of the Oil and Gas Act is  
19 enacted to read:

20 "[NEW MATERIAL] PERMIT APPLICATION--ADDITIONAL  
21 REQUIREMENT.--

22 A. No permit to drill or other permit to conduct  
23 oil and gas operations shall be issued pursuant to the Oil and  
24 Gas Act unless the applicant certifies that:

25 (1) the applicable lease or other oil and gas

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1 development agreement under which the operations are to be  
2 conducted was entered into in compliance with the requirements  
3 of the Free Market in Energy Restoration Act; or

4 (2) the provisions of the Free Market in  
5 Energy Restoration Act do not apply to the lease or other oil  
6 and gas development agreement.

7 B. Filing a certificate pursuant to Subsection A of  
8 this section that contains statements known to the applicant to  
9 be false constitutes a violation of the Oil and Gas Act."

10 Section 10. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2009.